PETROLEUM SHARES, INC.

IBLA 80-543 Decided March 19, 1981

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers C-29234 and C-29258.

Affirmed.

1. Oil and gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

   Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer pursuant to 43 CFR 3112.5-2, except in special circumstances not herein present.

APPEARANCES: Prentice R. Hull, President, Petroleum Shares, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Petroleum Shares, Inc. (Petroleum), has appealed from a February 13, 1980, decision of the Colorado State Office, Bureau of Land Management (BLM), rejecting its noncompetitive oil and gas lease offers C-29234 and C-29258. Prentice R. Hull signed drawing entry cards for parcels CO-6 and CO-30 on behalf of Petroleum Shares, Inc., as its treasurer, and submitted them in the simultaneous oil and gas lease offer drawing for October 1979, in which the cards were drawn with first priority. Hull also submitted drawing entry cards on his own behalf for the same parcels.

BLM rejected the drawing entry cards as multiple filings prohibited by the regulations, stating in part:

> Corporate qualifications filed in this Bureau's Wyoming State Office indicate that 100% of the stock of Petroleum Shares, Inc., is owned by Prentice R. Hull, who, as President-Treasurer, is authorized to act on behalf of the company in all matters relating to Federal oil and gas leases. Prentice R. Hull also filed, in his individual capacity, an offer for each of the parcels in question.
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> * * * Consequently, Petroleum Shares, Inc., had two chances to obtain a lease for each of the parcels involved -- one by virtue of its own offer and one by virtue of the offer made by Prentice R. Hull. Each offer must therefore be rejected as a multiple filing which is prohibited by regulations appearing at 43 CFR 3112.5-2.

In its statement of reasons, appellant contends:

> The language of 43 CFR 3112.5-2 does not specifically prohibit an officer of a corporation from filing on the same parcel as the corporation except in connection with some agreement, scheme, or plan to give either a greater probability of successfully obtaining a lease or interest therein. The affairs of Petroleum Shares, Inc. are held separate and apart from my personal affairs, therefore, since a corporation is held in Law to be a separate legal entity, no violation of 43 CFR 3112.5-2 would seem to be involved.
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> The fiduciary duty of an officer of a corporation to protect the interests of the corporation (e.g. by not competing against it) is not involved here. No competition between officer and corporation was involved since the offers were filed pursuant to 43 CFR 3110 -- Noncompetitive Leases. Further the device of "Simultaneous Offers" (Subpart 3112) provides the mechanism by which an officer of a corporation can fulfill his fiduciary duty without giving up his individual rights.

[1] We find appellant's arguments are without merit. We have recently considered and rejected these same contentions raised by appellant in another case where appellant's oil and gas lease offer had been rejected by the New Mexico State Office, BLM. In Petroleum Shares, Inc., 51 IBLA 246 (1980), we discussed at length a line of

cases which has specifically held that, except in special circumstances, corporate officers and their corporation may not both file offers for the same parcel in the same drawing. As before, we hold that the filings by appellant require rejection of Petroleum's offers. Where an officer of a business enterprise files offers on behalf of both his company and himself, the business gains a greater probability of successfully obtaining the lease, creating an inherently unfair situation warranting rejection of the lease offer of the company or the officer. The company's increased probability of success arises from the officer's fiduciary duty to hold an opportunity which is sought by the company for its exclusive use and benefit, and not his own, where the officer knew when he filed his offer that the company was interested in the opportunity. 43 CFR 3112.5-2. Petroleum Shares, Inc., supra at 248; Graybills Terminals Co., 33 IBLA 243 (1978). See also William R. Boehm, 34 IBLA 216, 217 (1978). Cf. D. M. Dowdle, 46 IBLA 83 (1980).

As was the situation in Petroleum Shares, Inc., supra, appellant's president, Prentice R. Hull, clearly knew that Petroleum desired this lease, as he himself filed its offer. Since Petroleum would have been entitled to the benefit of the offer if either its own or Hull's card were selected, it effectively had a double chance to win, as compared with the chances of other entrants. Thus 43 CFR 3112.5-2 was violated by these filings and the offer must be rejected. We note that in its decision, BLM rejected appellant's offer because filing of the two offers increased Hull's probability of successfully obtaining a lease. As explained above, the filing of the two offers increased Petroleum's chances of obtaining a lease. The special circumstances where a corporate officer's offer would appear not to be affected by the corporate relationship are not present in this case. To so qualify, the Board has noted in Graybill Terminals Co., supra, and Petroleum Shares, Inc., supra, that a corporate officer would have to be authorized by the bylaws of the corporation to engage in the oil and gas business; he would not be a stockholder; and would have to have the consent of the stockholders to engage in the oil and gas business. There appears to be no evidence that any of these factors exist in the instant case.

Further, even if Hull were able to establish that the corporation had no claim or interest in his offer, he would still have to prove the converse; i.e., that he could derive no beneficial interest from the success of the corporation's offer. As owner of 100 percent of the corporation's stock, he clearly stood to benefit if either his own offer or that of his corporation resulted in the issuance of a lease. See Richard Donnelly, 11 IBLA 170 (1973); Schermerhorn Oil Corp., 72 I.D. 486 (1965).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge